Suburban Journals of Greater St. Louis, L.L.C. *and* John Bradley, Petitioner *and* St. Louis Newspaper Guild—CWA Local 36047. Case 14–RD–1796

September 30, 2004

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The National Labor Relations Board, by a three-member panel, has considered objections to an election[1] held August 4, 2003, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 7 for and 7 against the Union, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings[2] and recommendations, and finds that a certification of results of election should be issued.

Objections

The Union's objections alleged, in essence, that the election should be set aside because the Employer engaged in objectionable conduct by promising benefits to employees if the Union were decertified and by withholding benefits and blaming the Union for their being withheld.[3]

Facts

The Union was certified as the exclusive bargaining representative of the Employer's editorial and advertising department employees on June 21, 2002. In bargaining in October 2002, the Employer proposed eliminating its current group insurance plan and, instead, offering employees a choice of four self-insured medical plans, plus a dental plan and a drug plan. Under both the then-existing plan and the proposed new plans, the employees were to pay 35 percent of the premium cost. The Union rejected the proposal. It proposed keeping the current benefits but under a self-insured plan. The Employer agreed, and it implemented this plan on January 1, 2003. On that date, the Employer also implemented for its unrepresented employees a new set of insurance plans similar to those that it had proposed to the Union but with employees paying 25 percent of the premium cost. Also, in April 2003 the Employer granted a 5-percent pay increase to its unrepresented employees.

Employee Bradley filed the instant decertification petition on June 23, 2003. In July, Bradley faxed to the Employer's human resources manager, Buhrman, a comparison prepared by the Union of the employees' current health insurance plan and the one that the Employer had proposed in bargaining. Buhrman determined that the comparison was misleading and erroneous. Additionally, employee Dawson called Buhrman three times to request information on the unrepresented employees' benefits. Based on these communications, Buhrman decided to meet with each unit employee individually to talk about health insurance matters. The meetings, conducted in a Denny's restaurant, were held during the final week of July.

In each meeting, Buhrman presented an outline of the unrepresented employees' benefits, including their medical, dental, vision, and life insurance plans, a stock purchase plan, their 5 percent wage increase, and their "Super Star" program, under which each month employees nominated an employee for a $200 bonus and lunch with the Employer's chief executive officer. Buhrman also presented a chart showing the unrepresented employees' bi-weekly insurance contributions. Additionally, for each employee, she presented a comparison of how much the employee paid for insurance and how much unrepresented employees were paying under the most equivalent employer plan. Finally, she presented a copy of the Union's insurance plan comparison with the Employer's corrections marked on it.

Buhrman's testimony about the meetings was credited by the hearing officer. At each meeting, Buhrman told the employee that she thought that the Employer's insurance plan was the better plan. She told employees May and McClintock that their coworkers were upset that their dental plan did not cover orthodontia. She told May that it was unfortunate that the employees did not cur-

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[1] The election was held in the following bargaining unit:

> All full-time editorial and advertising department employees employed by the Employer at its 220 E. Main St., Warrenton, Missouri and 501 E. Pearce Blvd., Wentzville, Missouri facilities, EXCLUDING guards and supervisors as defined in the Act, confidential employees, independent contractors, and all other employees.

[2] Member Schaumber commends the hearing officer, Matthew Lomax, for his specific, detailed credibility resolutions.

[3] The Union stated its election objections as follows.

Objection 1: "The Employer promised benefits to employees, including but not limited to health insurance plan improvements, pay raises and participation in insurance and other employee benefits plans, if the Guild were decertified, thereby unlawfully inducing employees to vote to decertify the Guild."

Objection 2: "By withholding these above referenced benefits and disparaging the Guild by blaming it for the withholding, even though Suburban Journals had not presented these specific benefits to the Guild in bargaining, the Suburban Journal unlawfully induced the employees to vote to decertify the Guild as collective bargaining representative."

rently have the stock purchase plan, Super Star program, or 5-percent pay increase. Employee Dawson asked her why the editorial staff was not given a 5-percent pay increase. Buhrman responded that the Union had not asked for such an increase in negotiations. She could not recall Dawson's asking her when the discussed benefits would be implemented if the employees voted to decertify the Union, and she denied telling him that it could be January or earlier. Only employees Cunningham and Bradley asked her what the employees would get if they voted to decertify the Union. She told them that she could not make any promises.

Hearing Officer's Decision

The hearing officer recommended that the Union's objections be overruled. He found that an employer is permitted to compare its represented employees' wages and benefits with those of its unrepresented employees, and it may state its opinion that the unrepresented employees' benefits are better. Acknowledging that a comparison of benefits which involves an explicit or implicit promise of benefits is objectionable, the hearing officer found that there was no testimony that Buhrman explicitly promised benefits if employees voted to decertify the Union, nor was there evidence that showed Buhrman implicitly promised benefits.

Noting that employer responses to employee inquiries are considered in finding whether there was implied promise of benefits and that an employer is allowed to respond to a union's misleading information, the hearing officer found that, in this case, Buhrman held the meetings with employees in response to an employee inquiry and misinformation distributed by the Union.[4]

The hearing officer found that this case was similar to *Viacom Cablevision*, 267 NLRB 1141 (1983). The Board found no implicit promise of benefits in that case because the employer there did no more than truthfully inform the employees of its unrepresented employees' wages, offered the wage comparison in response to employees' requests for information, repeatedly made verbal disclaimers of promises, and covered many topics other than the wage comparison.

The hearing officer found that this case differed significantly from *Etna Equipment & Supply Co*., 243 NLRB 596 (1979). In *Etna*, the Board found an implied promise of benefits when the employer gave each of its represented employees an individualized projection - tailored to the employee's age, length of service, and wage rate - of how much better they would fare under its unrepresented employees' retirement plan. Because of the extensive time and cost involved in the individually tailored projections and because it was common knowledge that the employer operated nonunion facilities, the Board found that the employees would logically conclude that the employer was doing more than just comparing benefits. The hearing officer found this case distinguishable from *Etna* because:

- The individualized comparisons here did not rise to the level of the elaborate and detailed projections that required extensive effort in *Etna.*
- Although the Employer's operation of nonunion facilities was known, the benefits provided at those facilities were not widely known, as shown by employee Dawson's repeated inquiries.
- In response to employee questions of what they would get if the Union were decertified, Buhrman stated that she could not promise anything.
- The Employer presented its comparisons as a response to Dawson's request, and the individualized insurance comparisons were just part of the Employer's overall presentation.

Rejecting the Union's objection that the Employer placed the onus for withholding benefits on the Union, the hearing officer found that Buhrman did not tell employees that they did not enjoy the benefits because they were represented by the Union. Telling employees that the Union had not sought such benefits at the bargaining table was a factual statement that Buhrman was entitled to make under Section 8(c). There was no evidence that the Employer was unlawfully motivated when it implemented for its unrepresented employees a health insurance plan somewhat different from the plan that it had proposed to the Union or when it gave the unrepresented employees the stock purchase plan, Super Star program, and the 5 percent pay increase that it had not proposed to the Union. Absent evidence of unlawful motivation, an employer may provide different benefit levels to represented and unrepresented employees.

Accordingly, the hearing officer concluded that the Employer's conduct was within the purview of permissible campaign propaganda and did not interfere with the employees' free choice in the election.

[4] The Union has not excepted to this finding, nor does the Union contend that the information it distributed was not erroneous.

Parties' Contentions

The Union contends that the facts of this case are closer to those in *Etna*, supra, and *Coca-Cola Bottling Co. of Dubuque*, 318 NLRB 814 (1995), in each of which the employer's individually tailored benefit comparisons were found to constitute implicit promises of benefits, than they are to the facts in *Viacom*, on which the hearing officer relied. In addition, the Union asserts that the two employees' requests for benefit information here did not justify the Employer's presenting benefit information to virtually all the unit employees in individual meetings.

The Employer contends that the hearing officer correctly found this case distinguishable from *Etna.* Additionally, contrary to the Union, this case is distinguishable from *Coca-Cola Bottling Co. of Dubuque*. In that case, the employer, without a request from employees, presented elaborate individualized benefit comparisons and 401(k) projections to each employee and made no effort to deny it was promising the benefits if the employees voted out the union. In the present case, by contrast, the hearing officer found that the Employer made simple comparisons of similar health plans and that Buhrman, when asked, denied that anything would occur if the Union was decertified.

Discussion

We agree with the hearing officer's findings that the Union's election objections should be overruled, because the evidence is insufficient to show that the Employer engaged in objectionable conduct. It is well settled that "[r]epresentation elections are not lightly set aside." *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (citing *NLRB v. Monroe Auto Equipment Co.*, 470 F.2d 1329, 1333 (5th Cir. 1972), cert. denied 412 U.S. 928 (1973)). "There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *NLRB v. Hood Furniture Mfg. Co.*, supra, 941 F.2d at 328. Accordingly, "the burden of proof on parties seeking to have a Board-supervised election set aside is a 'heavy one.'" *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989) (quoting *Harlan #4 Coal Co. v. NLRB*, 490 F.2d 117, 120 (6th Cir.), cert. denied 416 U.S. 986 (1974).

An employer is permitted to compare its represented employees' wages and benefits with those of its unrepresented employees. *TCI Cablevision of Washington, Inc*., 329 NLRB 700 (1999). Additionally, it is lawful for an employer to state its opinion, based on such a comparison, that employees would be better off without a union. *Langdale Forest Products Co*., 335 NLRB 602 (2001). Further, it is not per se unlawful for an employer to meet individually with employees to communicate its views about a union. *Flex Products*, 280 NLRB 1117 (1986); see *Frito-Lay, Inc*., 341 NLRB No. 65 (2004) ("ride-alongs" with truck drivers found not coercive).

Applying these principles, we find, contrary to the Union and our dissenting colleague, that nothing in Buhrman's meetings with employees constituted an implied promise of benefits if the employees voted to decertify the Union. Initially, we find, in agreement with the hearing officer, that Buhrman's comparison charts did not convey an implied promise of benefits. The charts merely show each employee's current cost for health insurance, the cost for equivalent coverage under a plan available to the Employer's unrepresented employees, and the difference between the two amounts. Thus, the information shown on Buhrman's charts was much simpler than *Etna's* calculations of future pension and IRA benefits and represented no more than a permissible comparison of its represented employees' benefits with those of its unrepresented employees. *TCI Cablevision of Washington, Inc*., supra. The comparison charts also compared only benefits already in existence, rather than projecting future benefits if employees chose to be unrepresented. See *Coca-Cola Bottling Co. of Dubuque*, supra. In *Coca-Cola*, the Board distinguished between the permissible comparison of "historical" - i.e., established - wage rates and the projection of *future* 401(k) amounts, and found the 401(k) projections to be similar to the pension and IRA comparisons in *Etna* and, therefore, objectionable. Buhrman's comparisons involve established health insurance rates rather than projections of future benefit amounts and thus are similar to *Viacom's* unobjectionable wage comparisons.

Additionally, as the hearing officer noted, the benefit comparisons here were presented in response to an employee's requests and therefore less likely to be considered an implied promise of benefits.[5] C*rown Electrical Contracting, Inc*., 338 NLRB No. 36 (2002), slip op. at 2 fn. 4. Furthermore, Buhrman, when asked what employees would get if they decertified the Union, explicitly stated that she could not make any promises. This factor further supports the hearing officer's overruling of the

[5] The facts of *BRK Electronics*, 248 NLRB 1275, 1276–1277 (1980), cited by our dissenting colleague, are totally unlike those of the present case. In *BRK*, an employer's statement that whether or not the employees received their pay raises would depend on the outcome of the election was held objectionable. Without regard to the fact that the statement was made in response to an employee's question, the Board found that the employer's objectionable statement was clearly a threat. The same cannot be said of the factually based benefit comparisons given to employees in response to an employee's inquiry which is at issue here.

objections. Cf. *Coca-Cola Bottling Co. of Dubuque*, supra (benefit comparison found objectionable where employer did not deny it was promising benefits).

Our dissenting colleague does not appear to contend that the comparison charts were independently objectionable. Rather, he finds that they conveyed an implicit promise of benefits under the "totality of the circumstances." We do not agree. The dissent cites the fact that Buhrman's meetings with employees were one-on-one and took place over an employer-provided lunch at a Denny's restaurant. However, such one-on-one communications are not inherently objectionable. *Frito-Lay, Inc.*, 341 NLRB No. 65 (2004). Nor is there any basis for finding, as our colleague does, that employees would be more likely to view the benefit comparisons as an implicit promise of benefits simply because they were accompanied by a free lunch. Additionally, while our colleague faults the Employer for showing each employee a newspaper article on the unrepresented employees' wage increase, unit employee inquiries concerning the unrepresented employees' benefits were the very reason that caused Buhrman to set up the meetings. Thus, as this was a legitimate reason for Buhrman to meet with unit employees, informing them of the unrepresented employees' benefits and wage increase at the meetings could hardly be improper.[6] Likewise, telling employee May that it was unfortunate that the unit employees did not have benefits that the unrepresented employees had, as well as chiding the Union for providing inaccurate health plan information, were nothing more than the Employer's lawful expressions of opinion, based on the benefits comparison, that employees would be better off without a union. See *Langdale Forest Products Co.*, supra.

We are mindful that Buhrman's meetings with the employees took place during the week before the election and that the election result was very close. The timing of the meetings, however, was close to the employee inquiries and the Union's misrepresentation. Further, whether examined individually or cumulatively, neither Buhrman's statements during the employee meetings nor the circumstances surrounding them constituted an objectionable promise of benefits warranting that the election be set aside. See *NLRB v. Van Gorp Corp.*, 615 F.2d 759, 764–765 (8th Cir. 1980) ("While we emphasize the need to consider the overall conduct of an election campaign, we caution that such an approach may not be used to turn a number of insubstantial objections to an election into a serious challenge.").

[6] Although an employer may not provide a new benefit to unrepresented employees and then refuse to bargain about providing the benefit to represented employees, *Pepsi Bottling Group, Inc.*, 338 NLRB No. 174 (2003); *Empire Pacific Industries*, 257 NLRB 1425 (1981), there is no contention that the Employer here engaged in such conduct.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for St. Louis Newspaper Guild—CWA Local 36047 and that it is not the exclusive representative of these bargaining unit employees.

Dated, Washington, D.C., September 30, 2004

Peter C. Schaumber, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting in part.

The Union alleged in Objection 1 that the Employer engaged in objectionable conduct warranting the setting aside of the election by promising benefits to employees, including but not limited to health insurance plan improvements, pay raises, and participation in insurance and other employee benefit plans, if the Union were decertified, thus improperly inducing employees to vote to decertify the Union. The hearing officer recommends that this objection be overruled, and my colleagues are adopting that recommendation. I disagree with them.[1] The totality of circumstances demonstrates that in the last few days before the election the Employer clearly implied to virtually all of the unit employees that they would receive improved benefits if they voted to decertify the Union. Accordingly, Objection 1 should be sustained and the election should be set aside.

Facts

The Union has been the certified exclusive collective-bargaining representative of a unit of the Employer's editorial and advertising employees at the Employer's Warrenton and Wentzville, Missouri, facilities since June 21, 2002. At the time of the August 4, 2003 decertification election,[2] there were 14 unit employees.

When negotiations for an initial collective-bargaining agreement began in August 2002, all of the Employer's employees were covered under a group health insurance

[1] I agree, however, with my colleagues' adoption of the hearing officer's recommendation to overrule the Union's Objection 2.

[2] All dates are within September 2002—August 2003 inclusive, unless expressed otherwise.

plan, for which they paid 35 percent of the premium. In October, the Employer told the Union that the Employer intended to change the medical and dental insurance effective January 1, to an option of four self-insured medical plans, a self-insured dental plan, and a self-insured drug plan. The cost to the employees, however, was to remain at 35 percent of the premiums. The Union rejected the proposed new plan for the unit employees. It proposed instead keeping the current benefits for unit employees under a self-insured plan, with a claims appeals procedure. The Employer agreed.

On January 1, the Employer implemented the agreed-upon self-insured plan for the unit employees, allowing them to maintain their current level of benefits and continue to pay 35 percent of the premium cost. Also on January 1, the Employer implemented for its unrepresented employees the plan it had proposed for all employees (i.e., including the unit employees) in October, but with a change and an additional benefit that had not been offered to the Union in October: the unrepresented employees only had to pay 25 percent of the premium cost, rather than the 35 percent paid by unit employees, and the unrepresented employees were given an optional vision plan that was not provided to the unit employees. The Employer and the Union never discussed these two additional benefits during their negotiations.

Around April, the Employer implemented a 5-percent wage increase for the unrepresented editorial staff. Also, at some time during the relevant period,[3] the Employer provided the unrepresented employees with an Employee Stock Purchase Plan and the opportunity to participate in the monthly Super Star Program, under which employees could nominate an employee to receive a $200 bonus and be the guest of the Employer's Chief Executive Officer at lunch.

The instant decertification petition was filed on June 23, and the election was scheduled for August 4.

During the last week in July, Human Resources Manager Judy Buhrman invited the unit employees to meet individually with her as her guest for lunch at a local restaurant. Buhrman had learned that there was some confusion among the unit employees about the particulars of their medical insurance. Also, a unit employee had recently asked Buhrman for information about all benefits enjoyed by the unrepresented employees, and about the employees' share of the cost of those benefits. Buhrman decided to conduct one-on-one lunch meetings with individual unit employees to clarify their medical benefits and to provide the requested information.

Twelve of the 14 unit employees attended these individual lunch meetings.[4] Buhrman told each employee that there was some misinformation being circulated by the Union about the Employer's insurance plans, and that the purpose of the meetings was to inform the employees of the correct information about all of the Employer's benefits before they voted in the election. In each meeting, Buhrman followed a printed discussion outline, styled "Benefits that Warrenton/Wentzville [i.e., unit employees, represented by the Union] do not have." She gave a copy of the outline to each of the employees who asked for it. In following the outline, she discussed the benefits enjoyed by unrepresented employees, but not by unit employees: the Employee Stock Purchase Plan; the 5-percent wage increase for the unrepresented editorial staff; the monthly Super Star Program; orthodontia with dental care; the ability to purchase medical and dental insurance separately; paying only 25 percent of the cost of the insurance premiums, rather than the 35 percent paid by unit employees; a Voluntary Term Life Insurance Program, under which unrepresented employees could purchase up to $250,000 worth of term life insurance for themselves and up to $50,000 worth for their spouses, without physical exam, and up to $10,000 worth for each of the employee's children; a voluntary supplemental accidental death and dismemberment insurance policy; an Employee Investing Services payroll deduction plan with Fidelity Investments; and a "Voluntary Cancer policy" (not further described in the discussion outline or in the record).

During these individual meetings, Buhrman also gave each employee a "PERSONALIZED RATE WORKSHEET" chart showing bi-weekly costs for unrepresented employees under the Employer's medical, dental, and vision care plans. Buhrman explained to the employees that the costs on the chart were based on the 25 percent of the premium cost that the unrepresented employees paid. Buhrman also gave each employee an individualized, separately prepared comparison of how much that particular employee paid for medical and dental insurance as a unit employee, at the 35 percent-of-premium rate, versus how much an unrepresented employee paid for the same insurance at the nonunit 25-percent rate. Buhrman also gave each employee a comparison of the employee medical and dental deductibles, copayments, and annual maximum employee expenditures under the insurance plan in effect for unit employees versus the generally more generous medical and dental plans available to the unrepresented employees. Buhrman also gave each employee a letter-sized version of an employer poster that

[3] The record does not establish when.

[4] The other two employees declined Buhrman's invitation.

graphically corrected some misinformation in a Union handout about proposed reductions in medical coverage for unit employees. At the bottom of the poster, the Employer asked this question and urged this action:

IS THIS THE REPRESENTATION

YOU WERE PROMISED?

VOTE NO

Finally, Buhrman showed each employee a newspaper article reporting, inter alia, that the Employer had recently given its unrepresented employees, but not its unit employees, a 5-percent wage increase. Buhrman had highlighted the part of the article reporting on the wage increase for unrepresented employees. In showing the employees the article, she specifically asked them if they knew about the 5-percent wage increase. They all said yes.

The decertification election was held a few days later, on August 4. The Union lost, 7-7.

The hearing officer credited Buhrman's testimony that she did not promise any employees any benefits if they voted to decertify the Union and that she told the employees that she could not make any promises. Buhrman told employees Ruth May and Jennifer McClintock that their co-workers were upset with the fact that the unit employees' dental care plan did not cover orthodontia. She told employee Brad Dawson that the reason why the unit employees did not get the 5-percent wage increase was because the Union did not ask for such an increase during contract negotiations. She told May that it was "unfortunate" that the unit employees did not currently have the Stock Purchase Plan, the Super Star Program, or the 5-percent wage increase. She told each employee that she thought the Employer's dental and life insurance plans were better than the Union's. She told employees Tabatha Cunningham and John Bradley that she could not make any promises about what unit employees would get or when they would get anything if they voted to decertify the Union.

Applicable principles

An employer may inform employees of the wages and benefits its nonunion employees receive and respond to requests for information from employees about such benefits. See *Duo-Fast Corp.*, 278 NLRB 52 (1986). And an employer has the right to compare wages and benefits presently in effect in its unorganized facilities with those enjoyed by employees in a similar facility which has union representation. Id. But an employer may not promise, either expressly or implicitly from the surrounding circumstances, that wages and benefits will be adjusted if the union is voted out, because such a promise interferes with employees' free choice in that election. See *Viacom Cablevision*, 267 NLRB 1141 (1983); *Lutheran Retirement Village*, 315 NLRB 103 (1994).

Application of Principles

In finding that this objection should be sustained and the election set aside, I conclude on the totality of the circumstances that the Employer implicitly promised the unit employees that if they voted to decertify the Union, they would get all the benefits that the unrepresented employees were currently enjoying.

Certainly it would have been entirely reasonable for the unit employees to infer such a promise from Buhrman's conduct in the individual lunch meetings. It would have been reasonable for the unit employees to feel, without any prodding from the Employer, that they would be treated just like all the other unrepresented employees as soon as they too became unrepresented by voting out the Union. But Buhrman's focused emphasis on the unrepresented employees' better benefits and higher wages during the one-on-one lunches with unit employees just a few days before the election effectively created a sufficient measure of implied assurance, urgency, and personal obligation that reasonably interfered with the unit employees' ability freely to choose whether to continue to be represented by the Union.

More specifically, the totality of the following circumstances establishes that the Employer interfered with the election by impliedly promising benefits if the employees voted to decertify the Union:

1. The one-on-one, free-lunch nature of Buhrman's meetings with the individual unit employees, in which she provided each employee with a series of documents showing that the unrepresented employees enjoyed better benefits and higher wages than the unit employees, pointedly and reasonably implying to the unit employees that they would enjoy these same better benefits and higher wages as soon as they got rid of the Union.[5]

[5] While under current Board law it is not per se or inherently objectionable for an employer, without more, to meet individually with employees to communicate its views about a union, the circumstances surrounding such one-on-one meetings can make them objectionable. See generally, e.g., *NVF Co.*, 210 NLRB 663 (1974) (when an employer during an election campaign calls employees, individually or in small groups, into a private area removed from their normal workplace and urges them to reject the union, such actions may constitute objectionable conduct depending on the size of the groups interviewed, the locus of the interview, the position of the interviewer in the employer's hierarchy, and the tenor of the speaker's remarks). As fully discussed herein, I find that the totality of the circumstances surrounding the one-on-one free-lunch restaurant meetings with Human Resources Manager Buhrman establish the alleged objectionable conduct.

2. Pointedly showing each unit employee a copy of the highlighted newspaper article reporting on, inter alia, the 5-percent wage increase for unrepresented employees and then pointedly asking each unit employee if they knew about that wage increase.

3. Telling May that it was "unfortunate" that the unit employees did not currently have the Stock Purchase Plan, the Super Star Program, or the 5-percent wage increase, thus reasonably implying to May that it would be *more* fortunate for the unit employees if they became unrepresented and thus eligible for those improvements.

4. Expressly linking the Employer's providing of correct medical plan information with open disparagement of the Union for providing inaccurate information ("Is *this* the representation you were promised?") and accompanying that disparagement with the Employer's entreaty to get rid of the Union **("Vote No").**

5. Personalizing some of the comparisons of benefits for unrepresented versus unit employees. Like the Employer here, the employer in *Coca-Cola Bottling of Dubuque*, 318 NLRB 814 (1995), engaged in objectionable conduct when, during the last few days prior to the decertification election, it held special meetings with unit employees in which it distributed documents comparing the benefits of unit employees to those of its unrepresented employees and impliedly promised to grant the benefits of the unrepresented employees to the unit employees if they voted to decertify the union. And again like the Employer here, the employer in *Etna Equipment & Supply*, 243 NLRB 596 (1979), engaged in objectionable conduct when it held dinner meetings with unit employees and their spouses about two weeks before the decertification election, in which it provided employees with individualized charts stressing the superior pension benefits enjoyed by unrepresented employees compared to unit employees, and impliedly promised to grant the benefits of the unrepresented employees to the unit employees if they voted to decertify the union. While the Employer's personalized employee comparisons in the instant case were not, in the final analysis, as extensive and particularized as the objectionable personalized presentations in *Coca-Cola* and *Etna*, that certainly does not preclude finding that the Employer's conduct in question was objectionable in itself.

I find that hearing officer's reliance on *Viacom*, supra, for overruling this objection is misplaced. *Viacom* is substantially distinguishable from the instant case on the basis, inter alia, that in that case the employer conducted group meetings, whereas here the Employer's Human Resources Manager Buhrman conducted separate one-on-one meetings with individual unit employees while they were enjoying lunch in a restaurant at the Employer's expense.

6. The timing of the individual meetings, during the last few days leading up to the election.

7. The closeness of the election result; each vote was outcome-determinative.

The totality of the above circumstances establishes that in the last few days before the election the Employer clearly implied to 12 of the 14 unit employees, in individual luncheon meetings hosted by the Employer's Human Resources Manager, that they would directly receive the health insurance plan improvements, pay raises, and participation in insurance and numerous other employee benefit plans then being enjoyed by the unrepresented employees if the unit employees voted to decertify the Union, and that the Employer did all of that while expressly urging each of the employees to **"Vote No"** in an election that could not have had a closer result.[6]

The Employer thus engaged in objectionable conduct interfering with the election as alleged in Objection 1, and the election should therefore be set aside.

Dated, Washington, D.C., September 30, 2004

Dennis P. Walsh, Member

NATIONAL LABOR RELATIONS BOARD

[6] The objectionable nature of these meetings with individual employees is not negated or mitigated by the fact that they may have been motivated at least in part by an employee's request to Buhrman for information on the unrepresented employees' benefits. Given the overall objectionable circumstances of these meetings, as discussed in full above, it does not matter that they may have been initially scheduled in part in response to an employee's inquiry rather than solely on the Employer's own initiative. See, e.g., *BRK Electronics*, 248 NLRB 1275, 1276–1277 (1980) (employer's statement in response to employee question was objectionable where employer told employees that pay raises were contingent on the outcome of the upcoming representation election). Nor is the objectionable nature of the Employer's conduct mitigated by the Employer's claim that it was only responding to misinformation circulated by the Union. The Employer's claimed appropriate reason for conducting the meetings does not make the promises of benefits that were implied during the meetings any less objectionable.

Moreover, the objectionable nature of the employer's conduct is not negated by the fact that Buhrman did not expressly promise any employees any benefits if they voted to decertify the Union and that she told the employees that she could not make any promises. It is immaterial that an employer professes that it cannot make any promises, if in fact, as here, it expressly or impliedly indicates that specific benefits will be granted. *Michigan Products*, 236 NLRB 1143, 1146 (1978). See, e.g., *Lutheran Retirement Village*, 315 NLRB 103 (1994).